IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

WP(C).No. 23714 of 2006(W)

CMA.99/2005 of D.C. & SESSIONS COURT,KOZHIKODE
OS.778/2002 of ADDL.M.C.,KOZHIKODE-I

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PETITIONER:

K.P. SHAJIL, S/O. K.P. ASOKAN,
SHYN'S' KACHERI AMSOM DESOM,
KOZHIKODE.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENTS:

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1. CALICUT DEVELOPMENT AUTHORITY,
KOZHIKODE, REPRESENTED BY ITS SECRETARY.

2. THE DISTRICT COLLECTOR,
CIVIL STATION, KOZHIKODE.

3. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, LOCAL ADMINISTRATION
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

R1 BY SC SRI.P.SANTHALINGAM
R2 & 3 BY SR. GOVT. PLEADER SMT. PUSHPALATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/10/2007, THE COURT ON 15/10/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE OUT PATIENT TICKET ISSUED TO THE PETITIONER FROM THE MEDICAL COLLEGE HOSPITAL, KOZHIKODE DT. 15.3.2004

EXT.P2: -DO- OF THE MEDICAL CERTIFICATE ISSUED TO THE PETITIONER DT. 7.8.2004

EXT.P3: -DO- OF THE ORDER PASSED BY THE ADDL. MUNSIFF, KOZHIKODE IN I.A. NO: 2983/2004 IN O.S. 778/2002 DT. 14.3.2005

EXT.P4: -DO- OF THE ORDER PASSED BY THE DISTRICT JUDGE, KOZHIKODE IN C.M.A. NO: 99/2005 DT. 31.3.2006

jj \TRUE COPY/

P.S. TO JUDGE

P.S. TO JUDGE

M.N.KRISHNAN, J

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W.P.(C) No.23714 OF 2006

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Dated this the 15th day of October 2007

JUDGMENT

This writ petition is preferred against the judgment of the District Court, Kozhikode in C.M.A.No.99 of 2005, whereby he confirmed the order of the Addl.Munsiff's Court-I, Kozhikode in I.A.No.2983/2004 in O.S.No.778/2002.

2. The petitioner is the plaintiff in the case and when the matter was listed for trial on 9.7.2004, it is averred that on account of the sustainment of the fracture of fibula, he could not attend the court and therefore the suit happened to be dismissed for default. Before the trial court, he had produced a certificate issued by the Doctor who treated him, but the said court negatived the same on the ground that the seal and signature was not visible. The appellate court has remarked that the photocopy of the certificate was shown to him which contains signature and seal. From the materials available, the following facts are clear. He had sustained fracture of fibula in March, 2004. He had undergone inpatient treatment in the hospital and the Doctor had given him a certificate. Immediately after the

dismissal of the suit for default, he had filed an application for restoration and had produced documentary evidence in support of the case of absence. In such situation, what is the guideline that is to be followed has been laid down by this court in the decision reported in ***Sreedhara Kurup v. Mickel (1968 KLT 599).*** This court held that it is largely a matter of wise discretion to be exercised by the Court bearing in mind the wholesome principle that the right of a party to be heard should be negatived only if there is gross negligence or gross carelessness and that if some steps have been taken and application for restoration has been made with some diligence and some evidence adduced making out a sufficient cause for absence, restoration should be ordered, minor misconduct or laches being corrected by the common curative of costs. The court also held that the brooding spirit of natural justice must be in the background while ascertaining whether there is sufficient cause.

3. As far as this case is concerned, there is alertness on the part of the plaintiff, there is reasonable cause for his absence and that he had attempted to tender acceptable evidence. So discretion has to be exercised in his favour. For the inconvenience caused to the other side, he can be ordered to pay some cost.

Therefore the orders under challenge are set aside and the court

below is directed to restore the suit to file on condition that the petitioner makes a payment of Rs.1,000/-(rupees one thousand only) as costs to the first respondent on or before 15.11.2007. If the amount is paid, the trial court is directed to restore the suit to file, give reasonable opportunity for all the parties concerned and dispose of the matter in accordance with law. If the amount is not paid within the stipulated period, the writ petition will stand dismissed.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-